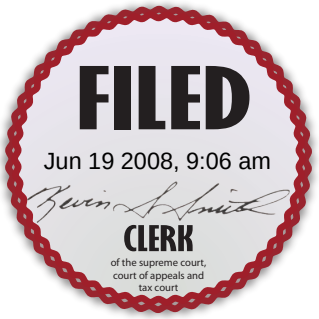

ATTORNEY FOR APPELLANT:

MARIELENA LINDKE
South Bend, Indiana

IN THE
COURT OF APPEALS OF INDIANA

T.M.,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 20A03-0801-JV-7
	)	
ELKHART COUNTY OFFICE OF FAMILY AND CHILDREN,	)	
	)	
	)	
Appellee.	)	

APPEAL FROM THE ELKHART JUVENILE COURT
The Honorable Deborah A. Domine, Magistrate
Cause No. 20C01-0701-JT-1 and 20C01-0701-JT-2

June 19, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Todd M. ("Father") appeals the termination of his parental rights to his children, A.M. and T.M. Father raises one issue on appeal, which we restate as whether the trial court erred when it accepted Father's signed statement voluntarily relinquishing his parental rights.

We affirm.

FACTS AND PROCEDURAL HISTORY

Father is the biological father of twins A.M. and T.M., born on November 2, 1997. On January 26, 2007, the Elkhart County Division of Child Services ("ECDCS") filed a petition with the trial court to involuntarily terminate[1] Father's parental rights to both children.[2] Father was appointed counsel and an evidentiary hearing was set for October 15, 2007. At the commencement of the involuntary termination hearing, Father's attorney informed the court that Father had decided to voluntarily relinquish his parental rights to A.M. and T.M. and presented the court with a signed Voluntary Relinquishment of Parental Rights form. On the same day, after testimony was taken, the trial court issued its judgment terminating Father's parental rights to A.M. and T.M. In so doing, the trial court made the following pertinent findings:[3]

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[1] The record is silent as to the events leading up to the ECDCS's filing of its petition to involuntarily terminate Father's parental rights.

[2] The ECDCS also filed a petition for the involuntary termination of the children's biological mother, Connie H. ("Mother"). Mother subsequently signed a voluntary relinquishment of parental rights consent form, which the trial court accepted and thereafter ordered Mother's parental rights to the children terminated. Mother is not a party to this appeal.

[3] The trial court entered separate judgments terminating Father's parental rights to each child under separate cause numbers. Except for the child's name, the judgments were identical.

3. This matter was set for an Evidentiary Hearing on today's date on the Termination Petition relating to [child's name]. At the commencement of the hearing, however, the lawyers for both [Mother] and [Father], the parents of the minor child, reported that the parents had chosen to voluntarily terminate their rights and they presented Voluntary Relinquishments of Parental Rights signed by [] each parent.

4. Thereafter, the parents, [Mother] and [Father], were advised of their constitutional and other legal rights and of the finality and other consequences of the act of termination; advisements were made in accordance with Indiana law.

5. [Mother] and [Father] have given written consent to the termination of the parent-child relationship before a person authorized by law to take such acknowledgments. In addition, each acknowledged signing the documents in open court, and each affirmed the voluntariness of the action. Each stated specifically, there was no fraud, coercion, or trickery involved in the decision to terminate. The mother and father were asked directly if they had been make (sic) promises or if they had been threatened in any way forcing their agreement to terminate, and each stated, directly, that they had not.

6. There is no competent evidence of probative value that fraud or duress was present when the written consent was given or that the parents were in any way incompetent when they made the decision to terminate their rights.

7. The mother and father indicated that they had had adequate opportunity to consult with their respective lawyers on the matter and each expressed the opinion that the action of termination was in the child's best interest. Each parent firmly stated that they loved their children, and tried to provide for them, but are unable to do so at this time.

8. The Court finds that termination is in the best interest of the child.

9. The [ECDCS] has a satisfactory plan for the care and treatment of the child. The plan is adoption.

10. At this time, the Court finds that the parental rights of both parents should be terminated based upon the relinquishment of parental rights signed by each of the parents, and the evidence presented in open court.

Appellant's App. pp. 11-14. This appeal ensued.

DISCUSSION AND DECISION

Father alleges the trial court erred when it accepted his signed, written statement relinquishing his parental rights to A.M and T.M. Specifically, Father claims that the "evidence fails to demonstrate that [Father's] relinquishment of parental rights was voluntary." Brief of Appellant p. 7. He further asserts that there were "several factors" which call into question whether Father's consent was truly voluntary, including the fact Father was "clearly emotional" at the time of the hearing, and the fact that Father had "only executed the termination paperwork that day." Id. at 9.

This Court has long had a highly deferential standard of review in cases concerning the termination of parental rights. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). Thus, when reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. In re D.D., 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. Id.

Here, the trial court made specific findings in terminating Father's parental rights. Where the trial court enters specific findings of fact, we apply a two-tiered standard of review. First, we must determine whether the evidence supports the findings. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). Secondly, we determine whether the findings support the judgment. Id. In deference to the trial court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied. A finding is clearly erroneous when

there are no facts or inferences drawn therefrom that support it. D.D., 804 N.E.2d at 264. A judgment is clearly erroneous only if the trial court's findings do not support its conclusions, or its conclusions do not support the judgment. Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996).

"The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." In re M.B., 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), trans. denied. However, parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. K.S., 750 N.E.2d at 836. The voluntary termination of a parent-child relationship is controlled by statute. Youngblood v. Jefferson County Div. of Family & Children, 838 N.E.2d 1164, 1168 (Ind. Ct. App. 2005), trans. denied. In order for a trial court to accept a parent's voluntary consent to the termination of parental rights, Indiana Code Section 31-35-1-6 provides in relevant part that:

> (a) [T]he parents must give their consent in open court unless the court makes findings of fact upon the record that:
>
> (1) the parents gave their consent in writing before a person authorized by law to take acknowledgments; and
>
> (2) the parents were:
>
> (A) advised in accordance with section 12 of this chapter; and
> (B) advised that if they choose to appear in open court, the only issue before the court is whether their consent was voluntary.
>
> (b) If:
>
> (1) the court finds the conditions under subsection (a)(1) and (a)(2) have been met; and

(2) a parent appears in open court;

a court may consider *only* the issue of whether the parent's consent was voluntary.

(Emphasis added). Thus, under this statute, when a parent executes a written consent for the voluntary termination of his parental rights and appears in open court to acknowledge his consent to the termination, that consent will be deemed valid. Youngblood, 838 N.E.2d at 1169. Indiana Code Section 31-35-1-12 provides, in pertinent part, that for purposes of Section 6 (cited above), the parents must be advised, among other things, that "their consent is permanent and cannot be revoked or set aside unless it was obtained by fraud or duress or unless the parent is incompetent" and that they "will be notified of the hearing and may appear at the hearing and allege that the consent was not voluntarily given." Ind. Code § 31-35-1-12(1) and (8).

We have previously determined that a parent's ability to withdraw consent to the termination of his or her parental rights is "extremely limited." Youngblood, 838 N.E.2d at 1169. A parent who executes a voluntary relinquishment of parental rights is thus "bound by the consequences of such action, unless the relinquishment was procured by fraud, undue influence, duress, or other consent-vitiating factors." In re M.R., 728 N.E.2d 204, 209 (Ind. Ct. App. 2000) (citation omitted), trans. denied. Accordingly, if there is "any competent evidence of probative value that: (1) fraud or duress was present when the written consent was given; or (2) a parent was incompetent[,] the trial court shall dismiss the petition or continue the proceeding." Youngblood, 838 N.E.2d at 1169 (citing Ind. Code § 31-35-1-7(c)).

In the present case, Father asserts that his consent was not voluntarily given because he was emotional at the termination hearing and he had only signed the voluntary consent that day. These assertions are simply not sufficient to satisfy the statutory requirement of proving duress. "In order to avoid a contract on the basis of duress, there must be an actual or threatened violence [or] restraint of a man's person, contrary to law, to compel him to enter into a contract or [to] discharge one." Youngblood, 838 N.E.2d at 1170. In deciding whether a person signed a document under duress, "the ultimate fact to be determined is whether or not the purported victim was deprived of the free exercise of his own will." Id.

In reviewing the record, we have not discovered any evidence of threatened violence to, or physical restraint of Father. To the contrary, Father, who was represented by counsel, informed the court that he had made the decision to voluntarily terminate his parental rights because he felt it was in the children's "best interest because [his] sister and her husband are able to better take care of them right now" and the children's "health and well-being has to be one of my main concerns." Tr. at 14. Although the trial court acknowledged Father was "obviously emotional about this[,]" the court ensured that Father was acting on his own volition when it asked Father, "Does this (Father's emotions) affect your understanding of what's going on today?" Id. at 11. Father responded, "No." Additionally, when the trial court informed Father that he was entitled to allege he had not signed the relinquishment form voluntarily and thereafter asked him if he wanted to make such an allegation, Father responded, "No, your Honor." Id. at 13. Additionally, at the termination hearing, the trial court informed Father that he had a right

to be represented by counsel and stated, "That means you have a right and an opportunity to consult. Have you had enough time to consult with Mr. Stansbury?" Id. When Father responded, "Yes, ma'am[,]" the trial court then asked, "Are you comfortable proceeding right now?" and Father again answered, "Yes, ma'am." Id.

Based on the foregoing, we cannot say that the juvenile court committed clear error when it terminated Father's parental rights to his children. Father voluntarily signed the consent forms after consulting with his attorney and thereafter affirmed his decision to relinquish his paternal rights to A.M. and T.M. in open court after being properly advised of his rights in accordance with Indiana law. Additionally, Father's testimony did not indicate that his free will was overcome by emotion when he signed the consent. "[E]motions, tensions, and pressure are insufficient to void a consent *unless* they rise to the level of overcoming one's volition." Youngblood, 838 N.E.2d at 1170 (emphasis added).

We will reverse a termination of parental rights "only upon a showing of 'clear error' -- that which leaves us with a definite and firm conviction that a mistake has been made." In re A.N.J., 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (citing Egly v. Blackford County Dep't. of Pub. Welfare, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here. Accordingly, the trial court's judgment terminating Father's parental rights to A.M. and T.M. is hereby affirmed.

Affirmed.

DARDEN, J., and BROWN, J., concur.